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**In the Supreme Court of the United States**

OCTOBER TERM, 1971

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

FIRST SECURITY BANK OF UTAH, N.A., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

\*ERWIN N. GRISWOLD,

Solicitor General,  
Department of Justice,  
Washington, D.C. 20530.

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## REPLY BRIEF FOR THE PETITIONER

One point made in respondents' brief requires a short reply.

Respondents refer (Br. 2, n. 1) to a 1959 Reorganization as a result of which respondents and Security Life became owned by separate, publicly-held corporations. Respondents suggest (Br. 14, n. 9) that, by virtue of the subsequently developing difference in ownership of the two corporate parents (Br. 2, n. 1), the Commissioner's proposed correlative adjustment reducing the income of Security Life would be ineffective. These statements, even if they constituted the whole truth, are irrelevant. The Commissioner's

allocation covers the period January 1, 1955 through September 15, 1959, when it is undisputed that respondents and Security Life were wholly-owned subsidiaries of Holding Company. The fact that a reorganization took place subsequent to the years in issue is of no consequence, since the common control requirement of Section 482 need only exist at the time related taxpayers engage in the transactions in question. *Rooney v. United States*, 305 F. 2d 681 (C.A. 9).

Respondents, however, have neglected to disclose that in April, 1970, the corporate parents of respondents and Security Life were re-unified. See *Moody's Bank and Finance Manual* (1971), p. 348. Today, as during the taxable years in issue, therefore, respondents and Security Life are controlled by a single holding company, and respondents could now as easily be made whole through arrangements adopted by the common parent as they could have been in the earlier years.

Respectfully submitted.

ERWIN N. GRISWOLD,  
*Solicitor General.*

JANUARY 1972.

